

5 U.S.C. 601, et seq., because the rule will be manifested as a cost principle to which only select small businesses are subject. Pursuant to FAR 31.000, the cost principles are applicable to contracts, subcontracts, and modifications whenever cost analysis is performed, or when a contract clause requires the determination or negotiation of costs. An analysis of contracts awarded during Fiscal Year 2014, the most recent full year for which information was available, revealed that fewer than 200 small businesses were performing contracts subject to FAR 31.

Again, the rule merely disallows costs incurred in the extremely rare instances when a contractor incurs costs in connection with a Congressional investigation or inquiry into an issue resulting in a disposition (e.g., conviction, liability, corrective action, etc.), as described in 10 U.S.C. 2324(k)(2). Accordingly, given the miniscule segment of the small business population that could potentially be impacted by the rule, and the low likelihood of the conditions being met, the impact on small businesses is insignificant.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the proposed rule. The final rule applies to all entities, both small and other than small, performing as contractors or subcontractors on U.S. Government contracts, and who are required to abide by the Cost Principles at FAR part 31. However, the rule is not expected to have a significant impact.

There are no reporting, recordkeeping, or other information collection requirements of the rule.

DoD, GSA, and NASA did not identify any significant alternatives that would reduce the impact on small entities and still meet the objectives of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 21, 2016.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 31.205–47 by—

■ a. In paragraph (a):

■ i. In the definition of “Fraud”, removing “*Fraud*means” and adding “*Fraud* means” in its place;

■ ii. In the definition of “Penalty”, removing the comma after the word “Penalty”;

■ iii. In the definition of “Proceeding”, removing the comma after the word “Proceeding”;

■ b. Revising paragraph (b) introductory text; and

■ c. Adding paragraph (f)(9).

The addition reads as follows:

31.205–47 Costs related to legal and other proceedings.

* * * * *

(b) Costs incurred in connection with any proceeding brought by: A Federal, State, local, or foreign government for a violation of, or failure to comply with, law or regulation by the contractor (including its agents or employees) (41 U.S.C. 4310 and 10 U.S.C. 2324(k)); a contractor or subcontractor employee submitting a whistleblower complaint of reprisal in accordance with 41 U.S.C. 4712 or 10 U.S.C. 2409; or a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is—

* * * * *

(f) * * *

(9) A Congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition as described in paragraphs (b)(1) through (5) of this section (see 10 U.S.C. 2324(e)(1)(Q)).

* * * * *

■ 3. Amend section 31.603 by—

■ a. Revising paragraphs (b) introductory text and (b)(15); and

■ b. Adding paragraph (b)(16).

The revisions and addition reads as follows:

31.603 Requirements.

* * * * *

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, under 10 U.S.C. 2324, 41 U.S.C. 4304, 31 U.S.C. 3730, and 41 U.S.C. 4310, the following costs are unallowable:

* * * * *

(15) Unless any of the exceptions at 31.205–47(c) or (d) apply, costs incurred by a contractor in connection with any

criminal, civil, or administrative proceedings that result in dispositions described at 31.205–47(b)(1) through (5) commenced by: A Federal, State, local, or foreign government, for a violation of, or failure to comply with, law or regulation by the contractor (including its agents or employees); a contractor or subcontractor employee submitting a whistleblower complaint of reprisal in accordance with 41 U.S.C. 4712 or 10 U.S.C. 2409; or a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730. For any such proceeding that does not result in a disposition described at 31.205–47(b)(1) through (5), or to which 31.205–47(c) exceptions apply, the cost of that proceeding shall be subject to the limitations in 31.205–47(e).

(16) Costs incurred in connection with a Congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition as described at 31.205–47(b)(1) through (5).

[FR Doc. 2016–31499 Filed 1–12–17; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2016–0051, Sequence No. 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–95; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–95, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–95, which precedes this document. These

documents are also available via the Internet at <http://www.regulations.gov>.

DATES: January 13, 2017.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–95 and the

FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–95

Item	Subject	FAR Case	Analyst
* I	Uniform Use of Line Items	2013–014	Francis.
* II	Acquisition Threshold for Special Emergency Procurement Authority	2016–004	Francis.
* III	Contractor Employee Internal Confidentiality Agreements or Statements	2015–012	Davis.
* IV	Contracts Under the Small Business Administration 8(a) Program	2012–022	Uddowla.
* V	Prohibition on Reimbursement for Congressional Investigations and Inquiries	2015–016	Delgado.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–95 amends the FAR as follows:

Item I—Uniform Use of Line Items (FAR Case 2013–014)

This final rule amends the FAR to establish standards for the uniform use of line items in Federal procurement. These standards are designed to improve the accuracy, traceability, and usability of procurement data. The implementation of these standards will facilitate the identification and traceability of spending from appropriation through expenditure, supporting automated collection of information using key identifiers. The implementation date for FAR 4.1002 through 4.1008 will be October 1, 2019.

The requirements in the rule have the potential to impact any entity, small or large, that does business with the Federal Government because the proposed rule would apply to purchases of items, including commercial items and commercially available off-the-shelf items, and purchases under the simplified acquisition threshold. Any small business that contracts with a Federal agency could be impacted to at least some extent.

Item II—Acquisition Threshold for Special Emergency Procurement Authority (FAR Case 2016–004)

This final rule amends the FAR by increasing the simplified acquisition threshold (SAT) for special emergency procurement authority from \$300,000 to \$750,000 (within the United States) and from \$1 million to \$1.5 million (outside the United States) for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or

radiological attack. This change implements Section 816 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92). This rule provides contracting officers with more flexibility when contracting in support of contingency operations.

The rule is not anticipated to have a significant economic impact on small business entities, because the rule raises the SAT for special emergency procurements, an arena in which a smaller percentage of small businesses participate, as compared to larger businesses. This final rule does not place any new requirements on small entities.

Item III—Contractor Employee Internal Confidentiality Agreements or Statements (FAR Case 2015–012)

This final rule revises the FAR to implement section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and successor provisions in subsequent appropriations acts. Section 743 prohibits the use of funds appropriated or otherwise made available by Division E or any other act, for a contract with an entity that requires employees and subcontractors of such entity to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse, to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency office of the Inspector General). This rule is not expected to have a significant impact on small entities contracting with the Government.

Item IV—Contracts Under the Small Business Administration 8(a) Program (FAR Case 2012–022)

This final rule amends the Federal Acquisition Regulation (FAR) to implement clarifications made by the

Small Business Administration in its final rule, which published in the **Federal Register** at 76 FR 8222 on February 11, 2011. This final rule clarifies in the FAR the procedures and requirements used when contracting under the 8(a) program. Clarifications include the evaluation, offering, and acceptance process, procedures for acquiring SBA’s consent to procure an 8(a) requirement outside the 8(a) program, and the impact of exiting the 8(a) program in terms of the firm’s ability to receive future 8(a) requirements and its current contractual commitments.

This final rule does not place any new requirements, financial or otherwise, on small entities, and serves mainly to provide more explicit guidance to Federal contracting officials.

Item V—Prohibition on Reimbursement for Congressional Investigations and Inquiries (FAR Case 2015–016)

This rule amends the FAR to implement section 857 of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015. Section 857 imposes additional requirements relative to the allowability of costs incurred by a contractor in connection with a congressional investigation or inquiry. Contracting officers need to be aware of these new restrictions on certain costs, which cannot be charged under contracts. Although small businesses subject to FAR part 31 will need to maintain accounting records, this rule does not place any new requirements on small entities.

Dated: December 21, 2016.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

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